

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MICHAEL R. SMITH

PLAINTIFF

v.

CAUSE NO. 1:17CV300-LG-RHW

**UNITED STATES DEPARTMENT OF NAVY
Richard V. Spencer, Secretary**

DEFENDANT

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DENYING MOTION FOR LEAVE TO PROCEED IFP**

BEFORE THE COURT is the Report and Recommendation [3] of Magistrate Judge Walker recommending that Plaintiff Smith's application to proceed in forma pauperis in this employment discrimination case be denied. Magistrate Judge Walker determined that Smith had adequate income with which to pay the filing fee. Smith has filed an objection, which the Court reviews de novo.

"A grant of leave to proceed in forma pauperis is made by considering only a petitioner's economic status." *Cay v. Estelle*, 789 F.2d 318, 322 (5th Cir. 1986), overruled in part by *Booker v. Koonce*, 2 F.3d 114, 116 (5th Cir. 1993) (citing 28 U.S.C. § 1915(a) and *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976)); *see also Eason v. Holt*, 73 F.3d 600, 602 (5th Cir. 1993). The district court has wide discretion in denying an application to proceed IFP, although it can abuse this discretion if it relies on arbitrary or erroneous grounds. *Hunter v. Rodriguez-Mendoza*, 623 F. App'x 266, 266 (5th Cir. 2015).

Smith's IFP application references monthly income totaling \$12,072.83 from disability, retirement, self-employment, and his spouse's wages. He lists some cash,

a \$195,000 home and three vehicles with a total value of almost \$30,000. He and his wife support their eighteen-year-old daughter. Smith lists \$9541.75 in monthly household expenses, \$47,230 in legal expenses associated with this lawsuit, and Chapter 13 bankruptcy payments totaling \$4596. Magistrate Judge Walker concluded from this information that Smith had adequate funds to pay the filing fee.

Smith objects that the income he has listed is gross; he and his spouse net \$9096 monthly after taxes. He also contends he will soon be in a negative cash flow situation if his Chapter 13 payment plan is not modified. Nevertheless, the Court concludes that Smith is not unable to pay filing fees, he is “in the position of having to weigh the financial constraints posed” by going forward with this case. *See Sears, Roebuck & Co. v. Charles W. Sears Real Est., Inc.*, 686 F. Supp. 385, 388 (N.D.N.Y. 1988). Accordingly, the Court overrules Smith’s objections to the Magistrate Judge’s findings and conclusion. The Report and Recommendation will be adopted as the findings of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [3] entered by United States Magistrate Judge Robert H. Walker is **ADOPTED** as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that the Motion for Leave to Proceed In Forma Pauperis [2] is **DENIED**. Plaintiff Smith must pay the filing fee to the Clerk of Court within thirty (30) days of the date of this Order. Failure to do so will result in dismissal of the case.

SO ORDERED AND ADJUDGED this the 5th day of January, 2018.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE